

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

WRIT PETITION NO.3983/2016

Shri Nilesh s/o Keshavrao Thombre
..VS..
Sou. Reeta Nilesh Thombre and another

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

CORAM : Z.A.HAQ, J.
DATED : 25.7.2016.

Heard Shri A.N. Ansari, Advocate for the
petitioner - original defendant.

The plaintiffs (wife and minor son of defendant)
have filed the civil suit praying for decree for declaration that
the plaintiff No.1 is wife of defendant, the marriage having
been solemnized on 10th January, 2007 and that the plaintiff
No.2 is the son of defendant. In these proceedings, the
plaintiffs filed an application (Exh. No.50) praying that the
defendant be directed to give the samples and D.N.A. test be
conducted so that the issue whether the defendant is
biological father of plaintiff No.2 can be decided properly.
The learned trial Judge has allowed the above application by
the impugned order.

The contention of the petitioner - defendant is that the plaintiffs had filed application with similar prayer in proceedings under Section 125 of the Criminal Procedure Code and that application was rejected. It is argued that the order passed by the learned Magistrate rejecting the similar application filed by the plaintiffs operates as *res judicata*. It is submitted that though this was pointed to the learned trial Judge, the submission made on behalf of the defendant is not considered.

The learned trial Judge has considered the relevant aspects in paragraph Nos.7 and 8 of the impugned order and has also considered the proposition laid down in the judgment given in the case of *Nandlal Wasudeo Badwaik V/s. Lata Nandlal Badwaik & Anr.* reported in **2015 ALL SCR 954**. The conclusions of the learned trial Judge are proper and cannot be faulted with. I do not see any reason to interfere with the impugned order. The petition is **dismissed**. No costs.

JUDGE

CERTIFICATE

“ I certify that this Judgment/Order uploaded is a true and correct copy of original signed Judgment/Order”.

Uploaded By : N.V. Tambaskar.
Personal Assistant.

Uploaded On : 27.7.2016.